(SPACE BELOW FOR FILING STAMP ONLY) SOLOMON E. GRESEN [SBN: 164783] JOSEPH M LEVY [SBN: 230467] LAW OFFICES OF RHEUBAN & GRESEN 2011 MAY 26 PM 2: 19 15910 VENTURA BOULEVARD, SUITE 1610 **ENCINO, CALIFORNIA 91436** TELEPHONE: (818) 815-2727 FACSIMILE: (818) 815-2737 5 Attorneys for Plaintiff, Steve Karagiosian 6 7 8 SUPERIOR COURT OF THE STATE OF CALIFORNIA 9 FOR THE COUNTY OF LOS ANGELES 10 OMAR RODRIGUEZ; CINDY GUILLEN-11 CASE NO.: BC 414 602 GOMEZ: STEVE KARAGIOSIAN: ELFEGO RODRIGUEZ; AND JAMAL Assigned to: Hon. Joanne B. O'Donnell, Judge CHILDS, Dept. 37 13 Plaintiffs, Complaint Filed: May 28, 2009 14 -VS-PLAINTIFF'S OPPOSITION TO 15 DEFENDANT'S MOTION IN LIMINE NO. 3 BURBANK POLICE DEPARTMENT: CITY FOR AN ORDER EXCLUDING EVIDENCE OF BURBANK: AND DOES 1 THROUGH 16 OR ARGUMENT RELATING TO ANY 100, INCLUSIVE. EVENTS OCCURRING AFTER THE FIRST 17 AMENDED COMPLAINT WAS FILED Defendants. 18 19 Final Status Conference: BURBANK POLICE DEPARTMENT; CITY 20 OF BURBANK, DATE: June 8, 2011 9:00 a.m. TIME: 21 Cross-Complainants, DEPT: 37 22 -vs-Trial Date: June 8, 2011 23 OMAR RODRIGUEZ, and Individual. 24 Cross- Defendant. 25 26 27 28

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MEMORANDUM OF POINTS AND AUTHORITIES

I. <u>DEFENDANT'S MOTION IS IMPROPER</u>

In Kelly v. New West Federal Savings (1996) 49 Cal. App. 4th 659, the defendant filed motions in limine "to exclude evidence of prior incidents unless an appropriate foundation was established," among others. (Kelly, supra, at p. 670.) The court held that such motions are improper, stating:

[M]any of the motions filed by Amtech were not properly the subject of motions in limine. were not adequately presented, or sought rulings which would merely be declaratory of existing law or would not provide any meaningful guidance for the parties or witnesses. For example . . . Motions No. 8, 20 and 21 sought to exclude evidence of prior incidents unless an appropriate foundation was established to show the relevance of such evidence or that the prior incidents were similar in nature to the incident involved in the suit. (Kelly v. New West Federal Savings (1966) 49 Cal. App. 4th 659, 670.) The court explained:

"Under appropriate circumstances, a motion in limine can serve the function of a 'motion to exclude' under Evidence Code section 353 by allowing the trial court to rule on a specific objection to particular evidence. . . . [P] In other cases, however, a motion in limine may not satisfy the requirements of Evidence Code section 353. For example, it may be difficult to specify exactly what evidence is the subject of the motion until that evidence is offered. Actual testimony sometimes defies pretrial predictions of what a witness will say on the stand. Events in the trial may change the context in which the evidence is offered to an extent that a renewed objection is necessary to satisfy the language and purpose of Evidence Code section 353. As we observed in People v. Jennings [(1988) 46 Cal. 3d 963 (251 Cal. Rptr. 278, 760 P.2d 475)], 'Until the evidence is actually offered, and the court is aware of its relevance in context, its probative value, and its potential for prejudice, matters related to the state of the evidence at the time an objection is made, the court cannot intelligently rule on admissibility.' (46 Cal. 3d at p. 975, fn. 3.) In these kinds of circumstances, an objection at the time the evidence is offered serves to focus the issue and to protect the record." (People

1	v. Morris, supra, 53 Cal. 3d at pp. 188-190.)
2	(Id. at p. 671, emphasis added.)
3	Likewise, this court cannot "rule in a vacuum." This is especially true where, as here,
4	Plaintiff remains employed by Defendant and has alleged ongoing harassment. The conduct is
5	allegedly ongoing, and the filing of the First Amended Complaint should not operate to cut off
6	Plaintiff's evidence. Defendant's motion should therefore be denied.
7	II. <u>DEFENDANT HAS FAILED TO SHOW ANY</u>
8	REAL PROBABILITY OF UNDUE PREJUDICE
9	Local Rules require the moving party to include in any motion in limine a "statement of the
10	specific prejudice that will be suffered by the moving party if the motion is not granted." (Local
11	Rule 8.92(a)(3).) Defendants motion contains no such statement of "specific prejudice."
12	Defendant thus has not met its burden of showing why the evidence it seeks to exclude is so
13	prejudicial that the Court should rule on this issue now instead of ruling on evidentiary objections
14	during trial. Defendant's motion should therefore be denied.
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16	III. <u>CONCLUSION</u>
17	For all the foregoing reasons, Plaintiff respectfully requests that Defendant's motion in limine
18	No. 3 be denied.
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20	DATED: May 25, 2011 LAW OFFICES OF RHEUBAN & GRESEN
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22	By: Steven M. Cischke
23	Attorneys for Plaintiff, Steve Karagiosian
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